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No. 85-1848

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1985

FRED A. KOEHLER,
*Petitioner,*

vs.

ILLINOIS CENTRAL GULF RAILROAD COMPANY, a corporation,
*Respondent.*

On Petition for Writ of Certiorari
to the Supreme Court of Illinois

## BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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### STATEMENT OF THE CASE

Petitioner is a railroad employee covered by the Railway Labor Act (45 U.S.C. §§ 151-162) ("RLA"). On December 12, 1979, respondent's chief medical officer disqualified petitioner from employment based on petitioner's medical condition. Petitioner filed a grievance for wrongful discharge. After his grievance was denied at the first and second levels of the grievance procedures, petitioner presented his grievance to the National Railroad Adjustment Board ("NRAB") pursuant to

§ 153First(i) of the RLA and the terms of the collective bargaining agreement between his union and respondent. The NRAB ruled in favor of petitioner based on an opinion by a panel of three physicians that petitioner was able to return to work, and ordered respondent to reinstate petitioner with full retroactive seniority.

This action for wrongful discharge was filed in the Twentieth Judicial Circuit, St. Clair County, Illinois, prior to the NRAB's reinstatement of petitioner. Petitioner alleged in his complaint that he was discharged in retaliation for filing a claim under the Federal Employers' Liability Act (45 U.S.C. §§ 51-60). The trial court denied respondent's motion to dismiss based on RLA preemption but certified its interlocutory order for review. The appellate court reversed the trial court on the basis that an employee covered by a collective bargaining agreement could not maintain an action for wrongful discharge. After a complicated procedural course, the Supreme Court of Illinois reviewed the issue certified by the trial court and determined that petitioner's retaliatory discharge claim was nothing more than a reformulation of his grievance. The Supreme Court of Illinois followed this Court's decision in *Andrews v. Louisville & Nashville Railroad Co.*, 406 U.S. 320, 323-25, 92 S.Ct. 1562, 1565-66, 32 L.Ed.2d 95 (1972) and the Seventh Circuit's decision in *Jackson v. Consolidated Rail Corp.*, 717 F.2d 1045, 1049 (7th Cir. 1983), *cert. denied,* 465 U.S. 1007, 104 S.Ct. 1000, 79 L.Ed.2d 233 (1984) and held that petitioner's wrongful discharge claim was preempted by the RLA and that his exclusive remedy was provided by that Act. *Koehler v. Illinois Central Gulf Railroad Co.*, ____ Ill.2d ____,____, 488 N.E.2d 542, 546 (1985).

## SUMMARY OF REASONS FOR DENYING PETITION FOR WRIT OF CERTIORARI

This Court held in *Andrews* that actions for wrongful discharge by railroad employees are preempted by § 153First(i) of the RLA. Every federal circuit that has considered this issue has held that an action in tort for retaliatory discharge by a railroad employee is preempted by that section, and no state or federal court has held otherwise.

## REASONS FOR DENYING PETITION FOR WRIT OF CERTIORARI

### I. This Court Has Settled The Issue Presented In This Case.

Congress enacted the Railway Labor Act to promote stability in labor-management relations in the national railroad industry. *Union Pacific Railroad Co. v. Sheehan,* 439 U.S. 89, 94, 99 S.Ct. 399, 402, 58 L.Ed. 2d 354 (1978), *reh'g denied,* 439 U.S. 1135, 99 S.Ct. 1060, 59 L.Ed. 2d 98 (1979). Among the provisions of the RLA designed to provide remedies for the resolution of disputes between railroads and their employees is 45 U.S.C. § 153First(i). Under § 153First(i), disputes between an employee and a railroad concerning the interpretation of the terms of a collective bargaining agreement are within the exclusive jurisdiction of the NRAB. *Andrews,* 406 U.S. at 325, 92 S.Ct. at 1565. The predecessor to the current § 153First(i) provided voluntary machinery to resolve these minor disputes. The failure of the voluntary machinery to resolve a large number of these minor disputes threatened to disrupt transportation "in this most important national industry." *Brotherhood of Railroad Trainmen v. Chicago River & Indiana Railroad Co.,* 353 U.S. 30, 40, 77 S.Ct. 635, 640, 1 L.Ed. 2d 622 (1957). To avoid interruption of interstate transportation by rail, Congress mandated that the parties submit their minor disputes to the NRAB for resolution. *Andrews,* 406 U.S. at 322, 92 S.Ct. at 1564; *Walker v. Southern Railway Co.,* 385 U.S. 196, 198, 87

S.Ct. 365, 366, 17 L.Ed. 2d 294 (1966). Congress considered it essential that these minor disputes be kept within the NRAB and out of the courts. *Sheehan,* 439 U.S. at 94, 99 S.Ct. at 402; *Trainmen,* 353 U.S. at 40, 77 S.Ct. at 640.

In *Andrews,* a railroad worker alleged that the defendant railroad had wrongfully discharged him when it refused to allow him to return to work following an automobile accident. This Court carefully considered the nature of wrongful discharge claims and their relationship to the clear Congressional intent embodied in the Railway Labor Act. This Court held:

> The fact that petitioner characterizes his claim as one for "wrongful discharge" does not save it from the Act's mandatory provisions for the processing of grievances. ... [T]he only source of petitioner's right not to be discharged, and therefore to treat an alleged discharge as a "wrongful" one that entitles him to damages, is the collective-bargaining agreement between the employer and the union. ... Thus petitioner's claim, and respondent's disallowance of it, stem from differing interpretations of the collective-bargaining agreement. ... His claim is therefore subject to the Act's requirement that it be submitted to the Board for adjustment.

*Andrews,* 406 U.S. at 323-24, 92 S.Ct. at 1565.

Every federal circuit court that has considered this issue has held that § 153First(i) of the RLA preempts all retaliatory discharge actions by railroad employees against their employers. *Jackson,* 717 F.2d at 1054; *Landfried v. Terminal Railroad Association of St. Louis,* 721 F.2d 254, 255 (8th Cir. 1983), *cert. denied,* 466 U.S. 928, 104 S.Ct. 1712, 80 L.Ed.2d 185 (1984); *Minehart v. Louisville & Nashville Railroad Co.,* 731 F.2d 342, 344-45 (6th Cir. 1984). In *Jackson,* the Seventh Circuit reasoned that "retaliatory discharge" is one variety of "wrongful discharge" and rejected the argument petitioner asserts here that a railroad employee may avoid the exclusive administrative

remedy provided by the RLA because his retaliatory discharge claim implicates certain rights allegedly not arising from the collective-bargaining agreement. 717 F.2d at 1049-51. Respondent's determination that petitioner was medically disqualified from performing railroad work and petitioner's belief that he was unjustly dismissed "stem from differing interpretations of the collective-bargaining agreement." *See Andrews,* 406 U.S. at 324, 92 S.Ct. at 1565. Thus, irrespective of the label petitioner places on his wrongful discharge claim, the Congressional mandate that minor disputes be settled by the NRAB will be defeated if petitioner is permitted to relitigate this dispute in the state courts after it was properly settled by the NRAB.

This Court recently reiterated the principle that a party may not avoid exclusive federal administrative remedies for labor disputes by characterizing a grievance as a tort action. *Allis-Chalmers Corp. v. Lueck,* ____ U.S. ____, 105 S.Ct. 1904, 85 L.Ed. 2d 206 (1985). In *Lueck,* this Court held that the scope of the preemptive effect of § 301 of the Labor Management Relations Act (29 U.S.C. § 185(a)) ("LMRA") extended to tort suits which could have been brought as grievances. 105 S.Ct. at 1916.

The rationale of *Lueck* mandates the conclusion that § 153First(i) of the RLA preempts plaintiff's action for wrongful discharge. Section 301 of the LMRA provides voluntary machinery for the resolution of disputes arising out of the interpretation of collective-bargaining agreements similar to the voluntary dispute resolution machinery provided in the predecessor to § 153First(i) of the RLA. Congress amended § 153First(i) by replacing the *voluntary* administrative remedy with a *compulsory* administrative remedy. Thus, the importance of preempting state claims which interfere with federal administrative dispute resolution machinery is even stronger under the RLA than under the LMRA:

> Indeed, since the compulsory character of the administrative remedy provided by the Railway Labor Act

> for [wrongful discharge] disputes such as that between petitioner and respondent stems not from any contractual undertaking between the parties but from the Act itself, the case for insisting on resort to those remedies is if anything stronger in cases arising under that Act than it is in cases arising under § 301 of the LMRA.

*Andrews,* 406 U.S. at 323, 92 S.Ct. at 1565. Since § 301 of the LMRA preempts tort suits which could have been brought as grievances, § 153First(i) of the RLA must preempt a tort action for wrongful discharge which was originally submitted to the NRAB as a minor dispute.

Petitioner cites only one case, *Raybourn v. Burlington Northern Railroad Co.,* 602 F. Supp. 385 (W.D. Mo. 1985), in which a tort action by a railroad employee was not preempted by the RLA. *Raybourn* has no application here. In that case plaintiff alleged false arrest and false imprisonment. *Raybourn* did not involve wrongful discharge. In fact, the *Raybourn* court agreed in dicta "that wrongful discharge cases are within the exclusive jurisdiction of the [Railway] Adjustment Board." 602 F. Supp. at 387 n.3.

## II. The Decision Of The Supreme Court Of Illinois Does Not Conflict With Any Other Decision.

Petitioner argues that the decision of the Supreme Court of Illinois conflicts with decisions of this Court and other decisions of the Supreme Court of Illinois. None of the decisions discussed by petitioner concern the preemption of wrongful discharge claims of railroad workers under the RLA, and all of those decisions are consistent with the decision of the Supreme Court of Illinois in this case.

Petitioner suggests that the decision of the Supreme Court of Illinois in this case conflicts with *Belknap, Inc. v. Hale,* 463 U.S. 491, 103 S.Ct. 3172, 77 L.Ed. 2d 798 (1983) and *Farmer v. United Brotherhood of Carpenters and Joiners of America,*

*Local 25,* 430 U.S. 290, 97 S.Ct. 1056, 51 L.Ed. 2d 338 (1977). Neither case is applicable to this case because both cases decided issues concerning preemption based on the primary jurisdiction of the National Labor Relations Board ("NLRB") to hear unfair labor practice charges under §§ 7 and 8 of the NLRA and not preemption based on the exclusive jurisdiction of the NRAB to resolve minor disputes between railroads and their employees.

The Supreme Court of Illinois properly recognized that the issue here is controlled by *Andrews* and other cases construing the preemptive effect of § 153First(i) of the RLA and not cases deciding the preemptive effect of §§ 7 and 8 of the NLRA. In *Jackson,* the Seventh Circuit distinguished the bases for preemption under the two statutes:

> [T]he difference between the impact of the NLRA and the RLA has significance. The focus of the NLRA is on specific conduct that Congress has deemed subject to either prohibition or protection, 29 U.S.C. §§ 157-158. Often, as illustrated by *Sears, [Roebuck & Co. v. San Diego County District Council of Carpenters,* 436 U.S. 180, 98 S.Ct. 1745, 56 L.Ed. 2d 209 (1978)], it is the objective of certain conduct, rather than the mere existence thereof, that is relevant to determining whether actions are protected or prohibited by the NLRA. In contrast, the RLA has made any grievance arising out of the collective-bargaining agreement subject to the exclusive arbitral remedies contained in that Act, 45 U.S.C. § 153First(i). It follows from this difference that a state claim is more likely to impinge on an area of exclusive administrative jurisdiction under the RLA than under the NLRA.

717 F.2d at 1052.

Moreover, the Seventh Circuit and the Supreme Court of Illinois reasoned that even if *Farmer* were to apply to cases arising under the RLA, permitting petitioner to reformulate his

grievance as a tort action would "unduly interfere with the dispute-resolution machinery of the RLA." *Koehler,* 488 N.E.2d at 546, Petitioner's Appendix at 12; *see Jackson,* 717 F.2d at 1054.

Finally, petitioner suggests that the decision of the Supreme Court of Illinois in this case conflicts with *Wheeler v. Caterpillar Tractor Co.,* 108 Ill.2d 502, 485 N.E.2d 372 (1985), *cert. denied,* ____ U.S. ____, 106 S.Ct. 1641, ____ L.Ed.2d ____ (1986) and *Midgett v. Sackett-Chicago, Inc.,* 104 Ill.2d 143, 473 N.E.2d 1280 (1984), *cert. denied,* ____ U.S. ____, 106 S.Ct. 278, 88 L.Ed.2d 243 (1985) (Petition at 26). It is clear that no conflict exists. *Wheeler* addressed the issue of preemption based on § 210 of the Energy Reorganization Act (42 U.S.C. § 5851) and not preemption under the RLA. *Midgett* did not discuss the issue of preemption. Thus, neither decision could conflict with the court's decision here that § 153First(i) preempts a tort action by a railroad employee for retaliatory discharge.

Furthermore, this Court should not review this case based on petitioner's argument that the decision of the Supreme Court of Illinois conflicts with that court's decisions in *Wheeler* and *Midgett.* This argument is more properly addressed to the Supreme Court of Illinois, which rejected it when it denied petitioner's petition for rehearing. The writ of certiorari should not be used to review the Supreme Court of Illinois' determination that its decisions are consistent with one another. *See* Supreme Court Rule 17.1(b).

The decision of the Supreme Court of Illinois follows this Court's decision in *Andrews* and the uniform decisions of the circuit courts and is also in harmony with this Court's decision in *Lueck.* No reasons exist for this Court to review this case.

## CONCLUSION

For the foregoing reasons, respondent respectfully requests this Court to deny the Petition for Writ of Certiorari.

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